

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

TONY GOMEZ,

Petitioner,

No. C 09-6055 PJH (PR)

vs.

**ORDER TO SHOW CAUSE**

RANDY GROUNDS, Warden, and the  
BOARD OF PAROLE HEARINGS,

Respondents.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, has filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

The petition attacks denial of parole, so venue is proper in this district, which is where petitioner is confined. See 28 U.S.C. § 2241(d).

**BACKGROUND**

In 1985 a Kern County jury found petitioner guilty of second degree murder. He was sentenced to prison for fifteen years to life. The petition is directed to a denial of parole on April 3, 2008. He claims to have exhausted these claims by way of state habeas petitions.

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An

1 application for a federal writ of habeas corpus filed by a prisoner who is in state custody  
2 pursuant to a judgment of a state court must “specify all the grounds for relief which are  
3 available to the petitioner ... and shall set forth in summary form the facts supporting each  
4 of the grounds thus specified.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C.  
5 foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts  
6 that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes  
7 (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970). “Habeas petitions which  
8 appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon*  
9 *v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J.,  
10 concurring).

#### 11 **B. Legal Claims**

12 As grounds for federal habeas relief, petitioner asserts that: (1) the Board of Parole  
13 Hearings’ decision was not supported by “some evidence;” (2) his equal protection rights  
14 were violated; (3) the Board has violated his rights by repeatedly denying parole based on  
15 the facts of an offense that occurred twenty-three years before the hearing; and (4) he has  
16 served longer than the time provided by the Board’s “matrix” regulation, and is in effect  
17 being punished as if he had been convicted of first degree murder. These claims are  
18 sufficient to require a response.

#### 19 **CONCLUSION**

20 For the foregoing reasons and for good cause shown,

21 1. The clerk shall serve by certified mail a copy of this order and the petition and all  
22 attachments thereto on respondent and respondent’s attorney, the Attorney General of the  
23 State of California. The clerk also shall serve a copy of this order on petitioner.

24 2. Respondent shall file with the court and serve on petitioner, within sixty days of  
25 the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules  
26 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be  
27 granted. Respondent shall file with the answer and serve on petitioner a copy of all  
28 portions of the state trial record that have been transcribed previously and that are relevant

1 to a determination of the issues presented by the petition.

2 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
3 the court and serving it on respondent within thirty days of his receipt of the answer.

4 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
5 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
6 Section 2254 Cases. If respondent files such a motion, petitioner shall file with the court  
7 and serve on respondent an opposition or statement of non-opposition within thirty days of  
8 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
9 within fifteen days of receipt of any opposition.

10 4. Petitioner is reminded that all communications with the court must be served on  
11 respondent by mailing a true copy of the document to respondent's counsel. Petitioner  
12 must keep the court informed of any change of address and must comply with the court's  
13 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
14 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*  
15 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

16 **IT IS SO ORDERED.**

17 Dated: November 10, 2010.



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PHYLLIS J. HAMILTON  
United States District Judge